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## RIGHT TO CONSTITUTIONAL REMEDIES (Under Indian Constitution)



Barkha Dwivedi

### INTRODUCTION :

Article 32 is the cornerstone of the entire edifice setup by the Constitution. Commenting on this article, in the Constitution assembly<sup>4</sup> Dr. Ambedkar said.

If one was asked to name any particular article of the Constitution on the most important an article without which this Constitution would be nullity. I would not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it.

On the above observation article 32 enshrines a very valuable right. As observed by the Supreme Court, if a prisoner's fundamental rights is flouted or legislative protection is ignored, the supreme court's right well run, breaking through stone walls on iron bars to

### ABSTRACT

*The sole object of the Article 32 of the Constitution is the enforcement of fundamental right guaranteed by the Indian Constitution. The right to move the Supreme Court held in number of cases, is only available when the fundamental rights are infringed, or likely to be taken away or abridged. This article is a fundamental rights itself clause (1) of Article 32 guarantees to every person the right to move the Supreme Court by appropriate proceedings for the enforcement of the right conferred by part III. of the Constitution. It would not be correct, therefore to maintain that the issue of the writs is entirely a matter & discretion with the Supreme Court as was held in Harendra Nath Sharma Vs State of Madhya Bharat<sup>1</sup>. The same view is that set out in Ramesh Thapar Vs State of Madras<sup>2</sup> where it is stated that article 32 does not merely center powers on the supreme court, as article 226 does on the high court to issue certain writs for the enforcement of the rights conferred by Part III or any other purpose, as part of its general jurisdiction. The Article provides "guaranteed remedy for the enforcement of those rights and this remedial rights it self a fundamental right by being included in Part III. The Supreme Court is thus constituted the protector and guarantor of fundamental rights, and it cannot consistently with the responsibility so laid upon it, refuse to entertain application seeking protection against infringement of such right on technical grounds. Thus the jurisdiction conferred on the Supreme Court by article 32 is not concurrent with the one given to high court by Article 226<sup>3</sup>.*

**KEYWORDS :** Constitutional remedy, Locus Standi, Judicial redress, PIL, Article 32, Curative Petition.

### SHORT PROFILE

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restore the rule of law. It is true that a declaration of fundamental rights in meaningless unless there is an effective machinery for enforcement of rights. If there is no remedy there is no right at all.

But, right to remedy as per traditional ordinary procedure is available who has suffered legal injury. Regarding right to remedy in expert sidebotham<sup>5</sup> (Case of locus stands) following opinions were expressed.

Judicial redress is available only to a person, who has suffered a legal injury by reason of violation of his legal rights or legally protected interest by the impugned action of the state or public authority or any other person, or who is likely to suffer a legal injury by

reason of the threatened violation of his legal rights or legally protected interest by any such action.

James CJ. Said, that a person aggrieved must be a man, "Who has suffered a legal grievance, a man against whom a decision has been pronounced which was wrongfully affected his little to something." The narrow aggrieved "Resulted is stultification of the growth of law in regard to judicial remedies.

The court of India have been relying upon the ruling in sidebotham case in regard to locus stands which postulates a right, duty pattern which is commonly feared in private law litigation.

In Chiranjit Vs Union of India<sup>6</sup> In Supreme Court held that the right to be enforced must ordinarily be the right to the petitioner himself. Thus the wording of Article 32(2) as a so elastic that it permits all necessary adaptation without legislative sanction from time to time so as to enable effective enforcement of the fundamental rights even if a proper writ has not been prayed for by the petitioner in a case his application cannot be thrown out. Article 32 permits large discretion to the Supreme Court to give the appropriate relief. The court can frame such writes as the exigencies of a particular case demand

### PROTECTION AGAINST INHUMAN TREATMENT IN JAIL:-

In Sunil Batra Vs union of India<sup>7</sup> The Supreme court treated the letter as a habeas corpus write petition. In this case court held that the writ of habeas corpus can be issued not only for releasing a person from illegal detention put also for protecting prisoners from inhuman and barbarous treatment.

In important case regarding speedy trial Hussainara Khatoon Vs Bihar<sup>8</sup>, an advocate Kapil Hingaroni filled a petition regarding inordinately long periods of under trial detention suffered by some accused criminal & which some times for exceeded the longest period of imprisonment

proscribed as punishment for the offence took up the issued and held that the right to speedy trial was part of the right to be governed by the procedure established by law guaranteed by Article 21 of the Constitution and directed courts and governments to speed up trials of such under trails prisoners.

Similarly the Supreme Court in peoples union for democratic Rights Vs Union of India (ASAD Games case)<sup>9</sup> Bandhua Mukti.Morcha Vs Union of India<sup>10</sup> Na Neeraj Choudhary Vs Union of India<sup>11</sup> Entertained letters addressed by petitioners to one of the judge as a writ petition. In Municipal council, Ratlam Vs Vardhi Chand<sup>12</sup> a division bench of the supreme court consisting of justice V.r. Krishra Iyer court Justice O. Chinappa readdy recognized the standing of the citizens, to seek directions against the municipality for removed of stench and stink caused by open drains and public excretion, under section 133 of the code of criminal procedure.

Justice Iyer referred elaborately to the concept of "Access to Justice" and observed that a few profound issued of processual Jurisprudence of Strategic significance to our legal system face us up and we must zero in on them as they involve problems of access to justice for the people beyond the blinkered rules of "Standing" of British Indian advantage. He emphasized that it the centre of gravity of justice is to shift as the preamble to the Constitution mandates, from the traditional individualism of a locus stands" To the community orientation of public interest litigation, these issues must be considered.

In state of Uttranchal Vs Balwant singh Chaupal<sup>13</sup> The Supreme court has reiterated the delaid of the origin and development of P.I.L. and has laid down imported guidelines for checking its misuse. In this case, the petitioner, has challenged the appointment of advocate general of the state on the ground that he was overage, that is beyond 62 years as provided in Article 217 of the Constitution. The High court



entertained his petition and directed the state to reply the state filed a special leave petition in the Supreme court. The Supreme Court held that this is a clear misuse of powers of the court and directed the petitioner (respondent) to pay costs of 1,00,000/- in the name of the Registrar general of High court of Uttranchal. The cost is to be paid within two months by respondent. If the cost is not deposited within two months, the same shall be recovered as the arrears of land revenue.

In *Daryao Vs State of U.P.*<sup>14</sup> The Supreme Court has said, "The granting of an appropriate relief under article 32 is not discretionary. The citizens are ordinarily entitled to appropriate relief under article 32, once it is shown that their fundamental rights have been illegally or unconstitutionally violated.

In *Rupa Ashok Hurra Vs Ashok Hurra*<sup>15</sup> a five judge Constitution bench of the supreme court headed by chief justice S.P. Bhattacharya has unanimously held that in order to rectify gross miscarriage of justice in its final judgment which cannot be challenged again the court will "allow" curative petition by the victim of miscarriage of justice to seek a second review of the final order of the court. Further court said. "We are of the view that though judges or the highest court do their best subject to the limitation of Human fallibility yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice" if would be the legal and moral obligation of the Apex court to rectify error in such a decision that otherwise would have remained under the cloud of uncertainty this judgment was given in a bench of petitions on the question whether a petitioner could question a final judgment even after the dismissal of a review petition. Justice Quaderi, Writing the judgment of the court said, "We are persuaded to hold that the duty to do justice in these rarest of rare cases shall have to prevail over the policy of certainty of judgment as though it is essential in public interest that a final judgment of the final court in the country should not be open to

challenge. But the court's concern for recording justice in a cause was not less important than the principle of certainty of its judgment because there could be grounds that such a decision was in violation of natural justice and there was an abuse of the courts process.

In this case court has laid down following specific norms for the court to entertain of such curative petition under its inherent power.

- (1) Court reaffirms that litigants are barred on challenging final decisions.
- (2) But in the cases of miscarriage of justice it would be its legal and moral obligation to rectify the error.
- (3) The petitioner will have to establish that there was a genuine violation of principles of natural justice and fear of the bias of the judge and judgment that adversely affected him.
- (4) The curative petition must accompany certification by a senior lawyer relating to the fulfillment of the requirements.
- (5) The petition is to be sent to three judges of the bench who passed the judgment affecting the petition.
- (6) If the majority of the judges on this bench conclude that the matter needed hearing before the same bench which may pass appropriate order it should be listed.
- (7) They could also impose "Exemplary costs" of the petitioner if his pleas lacked merit.

Curative Write petition in the name of *C.B.I. Vs Keshub Mahendra* their conversion of charge in relation to Bhopal gas Tragedy has been dismissed by the Apex Court. Court further said, decision as such cannot be read as removing section 323, 386, 397, 399 from criminal procedure code. Moreover, curative review has been sought after 14 years without explanation.

In matter of appointment of central vigilance commissioner<sup>(14)</sup> zone of consideration should be in terms of section 3(3) of 2003 Act. It shall not be restricted to civil

persons empanelled should be outstanding civil servants or persons of impeccable integrity.

The empanelment should be carried out on the basis of rational criteria, which is to be reflected by recording of reasons and/or noting asking to reasons by empanelling authority. The empanelment should be carried out by a person not below the rank to secretary the government of India in concerned ministry.

The empanelling authority, while forwarding the names of the empanelled officers/persons, should enclose complete information, material and data of the concerned officer/person, whether favourable or adverse. Nothing relevant nor material should be withheld from the selection committee. It will not only be useful but would also serve larger public interest and enhanced public confidence of the contemporaneous service record and acts of outstanding performance of the officer under consideration, even with adverse remark is specifically brought to the notice of the selection committee. The selection committee may adopt a fair and transparent process of consideration of the empanelled officer.

### CONCLUSION

Thus from the entire looking of the cases mentioned above, it is clear that right to constitute remedy is also one of fertile spheres for judicial activism. In so far as India is concerned, The Apex court relaxing the doctrine of locus standi has included in its jurisdiction epistolary jurisdiction. Further That, in municipal council, Ratlam Vs Vardhi Chand Apex court liberalized the concept of individual standing and transferred it into public standing in the form of public Interest Litigation. Since then the supreme court widened the extent and scope of public interest litigation. Besides, innovation of new tool in the name of public interest litigation and epistolary jurisdiction, court went to new jurisdiction in the form of curative writ petition in Rupa Ashok Hurra Vs Ashok Hurra. In this case court miscarriage of justice in final judgment the

court will allow curative petition by victim of miscarriage of justice to seek a second review of the final order of the court. Curative petition is of CBI Vs Kesub Mahendra which was ultimately dismissed.

### NOTES & REFERENCES :-

- (1) AIR 1950 SC 125
- (2) AIR 1950 Mad. 46
- (3) Atul Khullar Vs J.I.K AIR 1986 SC 1224
- (4) (1948) VII CAD 953
- (5) (1880) 14 Ch.D. 458
- (6) AIR 1951 SC 41
- (7) AIR 1978 SC 1675
- (8) AIR 1979 SC 1380
- (9) Peoples Union for Democratic Rights Vs Union of India (Asiad Case) AIR 1982 SC 1473
- (10) AIR 1984 SC 802
- (11) AIR 1984 SC 1088
- (12) Municipal Council, Ratlam Vs Vardhi Chand AIR 1980 SC 1622
- (13) AIR 2010 SC 2551
- (14) AIR 1961 SC 1457
- (15) AIR 2011 SC 2037



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